

28 March 2023

HIGH COURT DISMISSES L&M'S CLAIM AGAINST BULLER COAL UNDER DEED OF GUARANTEE

Bathurst is pleased to announce that the New Zealand High Court has dismissed L&M Coal Holding Limited's (now called LMCHB) claim under the Declaratory Judgements Act 1908 against it and Buller Coal Ltd. This claim was brought by L&M following the decision of the New Zealand Supreme Court in Bathurst and Buller's favour in July 2021. By this new claim, L&M had asserted that it was entitled to enforce a guarantee given by Buller Coal (under a Deed of Guarantee and Security (**DGS**)) for the first performance payment under the Sale and Purchase Agreement (**SPA**) between the parties.

Principally, the High Court ruled that as the first performance payment is not currently due by Bathurst, as a result of the operation of cl 3.10 of the SPA (which was the subject of the recent successful Supreme court proceedings), the payment is also not Guaranteed Money for the purpose of Buller Coal's guarantee. As such, and likewise, no sum is due by Buller Coal and there has been no breach of its obligations under the DGS.

The High Court also held that:

- if this had not been the correct interpretation of Buller Coal's obligations under the DGS, the Court would have been prepared to imply a term to this effect; and
- L&M should have claimed the relief it was claiming in this proceeding as part of its original proceedings under the SPA (as commenced in 2016), and its attempt to do so now was an abuse of process.

This now ends successfully for Bathurst all current proceedings with L&M.



Richard Tacon, CEO